REMARKS

In the new Office action dated July 7, 2006, on page 2 line 2, it is stated that:

> "[t]his office action is in response to the Appeal Brief filed April 6, 2006. Claims 1, 4-53 and 65-75 are currently pending."

On page 13 under the heading "Response to Arguments", it is stated that:

> "Applicant's arguments, see, filed April 6, 2006, with respect to the rejection(s) of claim(s) 1, 4-53, 65-75 under "102" and "103" have been fully considered and are persuasive. Therefore, the rejection has been withdrawal. However, upon further consideration, a new ground(s) of rejection is made in view of Chern."

The very contentions and reasons as to why the final rejections were not justified by the asserted prior art of record were fully explained to the Office in an After Final Communication dated November 15, 2005 prior to the filing of the Appeal Brief. The Appeal Brief simply further expounded on the After-Final Communication dated November 15, 2005. It is not understood why the Office did not find arguments filed in the After Final Communication persuasive. The Office should have found the arguments filed in the After-Final Communication persuasive and withdrawn the final rejections prior to the filing of the Appeal Brief, the preparation and filing of which were time-consuming and costly due to the strict formality requirements in preparing the Appeal Brief.

It is a dis-service to the Applicant and the public at-large to withdraw final rejections only after forcing the Applicant to incur such undue expenses while the final rejections could have been withdrawn earlier. The very purpose of appealing is to invoke the plenary review authority of the U.S. Board of Patent Appeals and Interferences to determine the legitimacy of the final rejections. The Office should have stood by its once firm final rejections, provide an Examiner's Answer and permit the Board of Patent Appeals and Interferences to review the final rejections.

According to MPEP 1002.02(d) pertaining to Petitions and Matters Decided by Supervisory Patent Examiners, it is stated that a Supervisory Patent Examiner approval is required to reopen prosecution after the filing of an appeal brief.

Elsewhere, MPEP 1207.04 pertaining to Reopening of Prosecution After Appeal, it is stated that "[t]he examiner may, with approval from the supervisory patent examiner, reopen prosecution to enter a new ground of rejection after appellant's brief or reply brief has been filed."

In fact, an entire form paragraph has been created for this purpose. ¶ 12.187 states:

> "In view of the [1] filed on [2], PROSECUTION IS HEREBY REOPENED. [3] set forth below.
>
> To avoid abandonment of the application, appellant must exercise one of the following two options:

(1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,

(2) initiate a new appeal by filing a notice of appeal under 37 CFR 41.31 followed by an appeal brief under 37 CFR 41.37. The previously paid notice of appeal fee and appeal brief fee can be applied to the new appeal. If, however, the appeal fees set forth in 37 CFR 41.20 have been increased since they were previously paid, then appellant must pay the difference between the increased fees and the amount previously paid.

A Supervisory Patent Examiner (SPE) has approved of reopening prosecution by signing below:

[4]
Examiner Note

1. In bracket 1, insert --appeal brief--, --supplemental appeal brief--, --reply brief-- or --supplemental reply brief--.

2. In bracket 2, insert the date on which the brief was filed.

3. In bracket 3, insert --A new ground of rejection is-- or --New grounds of rejection are--.

4. In bracket 4, insert the SPE's signature. Approval of the SPE is required to reopen prosecution after an appeal. See MPEP §§ 1002.02(d) and 1208.02."

Because this form paragraph is not used and there is no indication in the outstanding Office action dated July 7, 2006 bearing the signature of a Supervisory Primary Examiner approving the reopening of prosecution on this case, this Office action is defective as measured by the very standards established by the U.S. Patent & Trademark Office.

Due to this defect, the outstanding Office action is invalid, and the current status is that the Applicant is still waiting for an Examiner's Answer.

Should there be any legal authority under 35 U.S.C., 37 C.F.R. or common law permitting a Primary Examiner to reopen prosecution after filing of an appeal brief without the approval of a Supervisory Primary Examiner, a citation of that legal authority would certainly legitimize this reopening prosecution attempt.

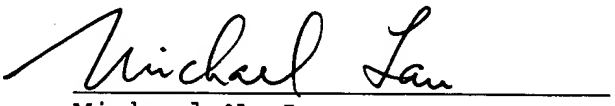
Should the Office wish to reopen prosecution on this case, compliance with MPEP 1002.02(d) and MPEP 1207.04 is respectfully requested. Restarting of a reply due date counting from the date of issuance of an Office action that is in compliance with MPEP 1002.02(d) and MPEP 1207.04 is also respectfully requested.

CONCLUSION

Should a personal interview be needed to advance the prosecution of the present application, the Examiner is invited to contact the undersigned attorney.

The Commissioner is hereby authorized to charge any underpayment of fees or credit any overpayment of fees in connection with this communication to Deposit Account 50-2840.

Respectfully submitted,
LAU & ASSOCIATES, LLC.



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